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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,258	02/02/2001	Adri Marinus Blomme	MBHB00-1156	5033

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EXAMINER

NERBUN, PETER P

ART UNIT PAPER NUMBER

3765

DATE MAILED: 04/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/674,258

Applicant(s)

BLOMME, ADRI MARINUS

Examiner

Peter P Nerbun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 14-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 10-13, 27, 29, 30 and 40 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 9, 28 and 31-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

The drawings are objected to because reference numeral "102" points to two separate elements in Fig. 2 (viz. the balloon and ring). Each element must have its own reference numeral. In Fig. 4A there is no arrow extending from element 65. Correction of these matters is required.

The disclosure is objected to since page 21, lines 27 and 29, page 22, line 19 and page 25, line 2 of the specification separately refer to an external body "70" and a coupling means "70". It would appear that the coupling means on page 25, line 2 is mis-numbered. Correction is required.

Claims 28, 30/28, 31/30/28, 32/31, 33/32/31/30/28, and 34-39 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Note, for example that claim 28, line 3 recites "as claimed in one or more of the claims 2-7". Accordingly, the claims 28, 30/28, 31/30/28, 32/31, 33/32/31/30/28, and 34-39 have not been further treated on the merits.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 27-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 12, line 3, applicant recites "the interruption closing means" however no antecedent is provided therefor. In claim 27, line 4, applicant recites "the suturing means" however here again no antecedent is provided. The same comment applies to claim 28, lines 2-3.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8, 10-13, 27, 30/27, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Holguin (WO97/39687). The Holguin reference discloses a suturing means for connecting a tubular vascular prosthesis 16, Fig. 3 to a blood vessel 22 in the body comprising an internal annular member 10, Figs. 1, 2 intended to be received inside the blood vessel and an external annular member 26, fig. 3 intended to be applied around the blood vessel essentially at the location of the internal annular member in order to receive the vessel wall between both annular members, in which at least one of the two annular members is provided with suturing members 12 which, at least in a connected state, grip in the vessel wall (see Fig. 3), fixating at least the internal annular member, characterized in that the internal annular member comprises a ring-like element intended to be firmly connected to an outer end of the vascular prosthesis that the external annular member and the ring-like element are capable of mutual cooperation so as to clamp the vessel wall there between.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 29, and 30/29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holguin (WO97/39687). It would have been obvious to form external annular members 26 from plastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 6, 7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

Applicant's election with traverse of restriction (election) requirement in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the claimed inventions share a technical relationship in that they are all part of the same vascular prosthesis system. This is not found persuasive because the species present in the instant application were deemed to lack unity of invention in the International Search Report since they are not so linked as to form a single general inventive concept under PCT Rule 13.1. Applicant should review page 1 of the International Search Report which states that "Unity of Invention is Lacking". See also page 3 of the International Search Report in which the International Search Authority has found multiple (groups of) inventions as defined by claims 1-13, 27-40, claims 14-17, claims 18-24, and claims 25,26. Also note the International Preliminary Search Report which states claims 18-25

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as being non-unitary with the remainder of the application and claims 18-26 as lacking a special technical feature which could unify these claims (with respect to the other claims of the application). The species defined in the inventions (species) outlined above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The species defined by claims 1-13 and 27-40 include the technical features of an external annular member and a crimp ring for application around a blood vessel. The species defined by claims 18-24 lack the same or corresponding technical features as this external annular member and crimp ring since claims 18-24 relate instead to a device for inserting and suturing a flexible tubular vascular prosthesis comprising a flexible infeed line and a fixation member.

The requirement is still deemed proper and is therefore made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

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Peter Nerbun  
April 24, 2003

A handwritten signature in black ink that reads "Peter Nerbun". The signature is written in a cursive style with a large, looping "P" and a trailing flourish at the end.

Peter Nerbun  
Primary Examiner